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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 25.01.2006

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice N.PAUL VASANTHAKUMAR

Habeas Corpus Petition No.40 of 2006

R.Suresh Kumar ... Petitioner

vs.

1. K.A.Kalavathi

2. K.M.Arumugham

3. The Inspector of Police,
Kolathur Police Station,
Kolathur, Chennai-99. ... Respondent

Petition under Article 226 of the Constitution of India for the issuance of writ of habeas corpus to direct the first respondent to produce bodily the petitioner's male child by name Siddarth, aged about 4 ½ years, in the court and hand over the said child to the custody of the petitioner.

For petitioner : O.R.Abul Kalam.
For Respondents : Mr.M.K.Subramanian,
Government Advocate.

O R D E R
(Order of the Court was made by P.SATHASIVAM, J.)

The petitioner by name R.Suresh Kumar has filed this petition seeking for a direction to the first respondent K.A.Kalavathi, who is none else than his wife, to produce his male child by name Siddarth, aged about 4 ½ years, in the Court and for further direction to hand over the child to his custody.

2. In the affidavit filed in support of the above petition, the petitioner has stated that the first respondent is his wife and the second respondent is his father-in-law. The petitioner married the first respondent five years ago and he was blessed through the first

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respondent with one male child by name Siddarth, now aged 4 ½ years, studying in Kinder Garden class, Don Bosco Matriculation School, Madras. They also have a female child by name Mathumitha, aged about 2 ½ years. According to the petitioner, on 08.11.2005, the first respondent left the house of the petitioner along with the male child without any intimation. There is no dispute that the petitioner has not made any complaint against anyone including the third respondent.

3. Learned counsel for the petitioner, by drawing our attention to Section-6 of the Hindu Minority and Guardianship Act, 1956, vehemently contended that inasmuch the petitioner being father/natural guardian of the minor, he is entitled to the custody of the child and that this Court can issue suitable direction to the first respondent for handing over the minor in favour of the petitioner. In support of the above contention, he relied on a decision of this Court reported in AIR 1984 Madras 186 (Suresh Babu v. Madhu) and also a decision of the Kerala High Court in Vasudevan vs. Viswalakshmi (AIR 1959 Kerala 403).

4. Insofar as the custody/entitlement/right over the minor child is concerned, we are of the view that the said question cannot be gone into by this Court, hearing Habeas Corpus Petition. Admittedly, the petitioner has not approached the competent Court/Forum to vindicate his grievance. Inasmuch as even according to the petitioner, the child, aged about 4 ½ years, is with the first respondent, who is none else than the mother of the child, we are of the view that the claim of the petitioner cannot be gone into by this court in this petition. It is made clear that the petitioner is free to approach the appropriate forum to vindicate his grievance.

5. With the above observation, the Habeas Corpus Petition is dismissed.

JI.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

The Inspector of Police, Kolathur Police Station,
Kolathur, Chennai-99.

2) The Public Prosecutor, High Court, Madras

AK(CO)
NM(07/02/2006)

HCP No.40 of 2006.

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